

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:

**HEALTH DIAGNOSTIC LABORATORY,
INC., et al.,**

Debtors.¹

**RICHARD ARROWSMITH AS
LIQUIDATING TRUSTEE OF THE HDL
LIQUIDATING TRUST,**

Plaintiff,

v.

GENENEWS (USA), INC.

Defendant.

Chapter 11

Case No.: 15-32919-KRH

Jointly Administered

Adversary Proceeding No. 16-_____

**COMPLAINT TO COMPEL TURNOVER OF PROPERTY TO THE ESTATE AND TO
RECOVER PAYMENTS DUE PURSUANT TO PROMISSORY NOTE**

Richard Arrowsmith, in his capacity as Liquidating Trustee of the HDL Liquidating Trust (the “**Plaintiff**” or the “**Liquidating Trustee**”), appointed pursuant to the confirmed Modified Second Amended Plan of Liquidation (the “**Plan**”) of Health Diagnostic Laboratory, Inc., et al.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Health Diagnostic Laboratory, Inc. (0119), Central Medical Laboratory, LLC (2728), and Integrated Health Leaders, LLC (2434).

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(the “**Debtors**”), by and through his counsel, for his Complaint to Compel Turnover of Property to the Estate and to Recover Payments Due Under Promissory Note (the “**Complaint**”) against GeneNews (USA), Inc. (“**GeneNews**” or the “Defendant”) and respectfully alleges as follows:

JURISDICTION AND VENUE

1. On June 7, 2015 (the “**Petition Date**”), each of the Debtors filed with the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the “**Bankruptcy Court**”), its respective voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”), commencing the above-captioned Chapter 11 Cases (the “**Chapter 11 Cases**”). On June 9, 2015, the Bankruptcy Court entered an order authorizing the joint administration of these Chapter 11 Cases [Docket No. 42]. On June 16, 2015, the United States Trustee for the Eastern District of Virginia appointed the statutory committee of unsecured creditors (the “**Unsecured Creditors Committee**”).

2. On May 12, 2016, this Court entered an order confirming the Plan [Docket No. 1095] (the “**Confirmation Order**”). Pursuant to the Plan and 11 U.S.C. § 1123, the Liquidating Trustee is the successor, for all purposes, of the Debtors and the Creditors’ Committee, and is thereby vested with standing to bring this Motion as a representative of the HDL Liquidating Trust.

3. This Bankruptcy Court has subject matter jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b).

4. This Adversary Proceeding constitutes a core proceeding by virtue of 28 U.S.C. § 157(b)(2)(A), (E), and (O).

5. The predicates for the relief requested herein are sections 105(a), 502, 541 and 542(b) of the Bankruptcy Code and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

6. The Liquidating Trustee consents to entry of final orders and judgment by the Bankruptcy Court in this Adversary Proceeding.

7. Venue is proper in this Bankruptcy Court as to the Debtors and the Liquidating Trustee under 28 U.S.C. §§ 1408 and 1409.

8. Venue is proper in this Bankruptcy Court as to the Defendants because a substantial part of the events or omissions giving rise to the claims asserted herein against the Defendants occurred in this judicial district.

PARTIES

9. Health Diagnostic Laboratory, Inc. (“**HDL**”) is a privately held company and was incorporated in the Commonwealth of Virginia.

10. Upon information and belief, GeneNews is a Delaware corporation.

PROCEDURAL AND FACTUAL BACKGROUND

A. The GeneNews Note.

11. On or about May 15, 2015, GeneNews purchased an ownership interest in Innovative Diagnostic Laboratory, LLP (“**Innovative**”) from HDL USA Holdings, LLC, a wholly owned subsidiary of HDL (“**Holdings**”), and provided, as consideration therefore, a \$1 million promissory note payable to Holdings (the “**Initial GeneNews Note**”).

12. On or about March 2, 2016, Holdings and GeneNews executed an Amended and Restated Secured Promissory Note (the “**Amended GeneNews Note**”) for the purpose of evidencing all obligations of GeneNews to Holdings under the Initial GeneNews Note and restructuring the payment terms of the Initial GeneNews Note. A true and correct copy of the Amended GeneNews Note is attached hereto as Exhibit A.

13. In accordance with the Amended GeneNews Note, GeneNews promised to pay to Holdings the sum of \$950,000 plus interest accruing at the rate of WSJ Prime plus 4% per annum, with interest payments due monthly in arrears commencing on April 1, 2016. In addition, GeneNews promised to make monthly principal curtailment payments to Holdings in the monthly amount of \$20,000.00 commencing on April 1, 2016.

14. GeneNews is in default of its obligations under the Amended GeneNews Note. All payments due to Holdings under the Amended GeneNews Note constitute property of the estate and are immediately due and payable to the Liquidating Trustee.

15. Despite demand from the Liquidating Trustee, GeneNews has refused to remit payments due under the Amended GeneNews Note to the Liquidating Trustee. As of August 1, 2016, the total amount outstanding and due from Cobalt under the Amended Cobalt Note is \$1,034,583.33

B. The Cobalt Note.

16. On or about May 15, 2015, Cobalt bought an ownership interest in Innovative, from Holdings, and provided, as consideration therefore, a \$1 million promissory note payable to Holdings (the “**Initial Cobalt Note**”).

17. On or about March 2, 2016, Holdings and Cobalt executed an Amended and Restated Secured Promissory Note (the “**Amended Cobalt Note**,” and together with the Amended GeneNews Note, the “**Amended Notes**”) for the purpose of evidencing all obligations of Cobalt to Holdings under the Initial Cobalt Note and providing for restructured payment terms. A true and correct copy of the Amended Cobalt Note is attached hereto as Exhibit B.

18. In accordance with the Amended Cobalt Note, Cobalt promised to pay to Holdings the sum of \$1 million plus interest accruing at a rate of WSJ Prime plus 4% per annum,

with interest payments due monthly in arrears commencing on April 1, 2016. In addition, Cobalt promised to make monthly principal curtailment payments to Holdings in the monthly amount of \$20,000.00 commencing on April 1, 2016.

19. On or about March 2, 2016, GeneNews entered into an agreement with Cobalt pursuant to which GeneNews's wholly-owned subsidiary, GeneNews (USA), Inc. acquired Cobalt's fifty percent (50%) ownership of IDL, giving GeneNews full ownership of IDL. Under the March 2, 2016 Agreement, a copy of which is attached hereto as Exhibit C, GeneNews assumed Cobalt's liability under the Amended Cobalt Note payable to Holdings.

20. GeneNews is in default of its obligations under the Amended Cobalt Note. All payments due to Holdings under the Amended Cobalt Note constitute property of the estate and are immediately due and payable to the Liquidating Trustee. As of August 1, 2016, the total amount outstanding and due from Cobalt under the Amended Cobalt Note is \$982,845.17.

21. Despite demand from the Liquidating Trustee, GeneNews has refused to remit payments due under the Amended Cobalt Note to the Liquidating Trustee.

COUNT I

Turnover of Property of the Estate Pursuant to Section 542(a) of the Bankruptcy Code

22. The Liquidating Trustee repeats and re-alleges each and every allegation contained in paragraphs 1 through 21 above as if fully set forth herein.

23. Section 542(a) of the Bankruptcy Code provides in pertinent part "an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under 363 of this title, or that the debtor may exempt under 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property" 11 U.S.C. § 542(a).

24. GeneNews owes money to the Debtors' bankruptcy estates as provided in the Amended Notes, which money constitutes property of the Debtors' bankruptcy estates pursuant to section 541 of the Bankruptcy Code.

25. Accordingly, pursuant to section 542 of the Bankruptcy Code, GeneNews must turn over to the Liquidating Trustee and/or the Debtors' bankruptcy estates the sums due under the Amended Notes, plus any and all related fees, costs, and/or damages that may be proven at trial.

COUNT II
Breach of Contract

26. The Liquidating Trustee repeats and re-alleges each and every allegation contained in paragraphs 1 through 25 above as if fully set forth herein.

27. As set forth in the Amended Notes, the Liquidating Trustee has a contractual right to collect all monies due thereunder. GeneNews has breached the terms of the Amended Notes by failing to pay as agreed, thereby damaging the Debtors and/or the Debtors' bankruptcy estates.

28. Accordingly, GeneNews must pay to the Liquidating Trustee and/or the Debtors' bankruptcy estates all monies due under the Amended Notes, plus any and all related fees, costs, and/or damages that may be proven at trial.

COUNT III
Conversion

29. The Liquidating Trustee repeats and re-alleges each and every allegation contained in paragraphs 1 through 28 above as if fully set forth herein.

30. The rights to payment under the Amended Notes are property of the Debtors' bankruptcy estates pursuant to section 541 of the Bankruptcy Code.

31. Upon information and belief, GeneNews has exercised dominion and control over the monies due to the Debtors, the Debtors' bankruptcy estates, and/or the Liquidating Trustee under the Amended Notes.

32. Upon information and belief, GeneNews has exercised dominion and control over the payments due to the Debtors' estates under the Amended Notes has deprived the Debtors' bankruptcy estates of such funds.

33. GeneNews' interference with assets of the estates has caused damage to the Debtors' bankruptcy estates.

34. Accordingly, GeneNews must pay to the Liquidating Trustee and/or the Debtors' bankruptcy estates all sums due under the Amended Notes, plus any and all related fees, costs, and/or damages that may be proven at trial.

35. The Liquidating Trustee hereby reserves his right to supplement and/or amend this Complaint to include additional facts, theories, and/or transfers as such may be discovered during the course of this Adversary Proceeding and preserve all other claims and defenses relating to GeneNews.

WHEREFORE, the Liquidating Trustee respectfully requests that the Bankruptcy Court enter an Order and Judgment:

- (a) finding GeneNews to be in possession, custody, or control of monies due to the Debtors' estates in the total amount of \$2,017,437.50 plus all applicable fees, costs, and damages;
- (b) finding such monies due to the Debtors' estates in the amount of \$2,017,437.50 plus all applicable fees, costs, and damages, to be property of the Debtors and/or property of the Debtors' bankruptcy estates;
- (c) finding GeneNews to be in breach of the Amended GeneNews Note and the Amended Cobalt Note;
- (d) finding GeneNews to have converted such monies;

- (e) awarding the Liquidating Trustee his costs and expenses incurred in connection with this Adversary Proceeding, including reasonable attorneys' fees; and
- (f) entering judgment in favor of the Liquidating Trustee and against GeneNews in an amount not less than \$2,017,437.50, with interest accruing from the date of this Complaint at the judgment rate of interest (the "**Judgment**");
- (g) awarding post-judgment interest at the maximum legal rate running from the date of the Judgment until the date the Judgment is paid in full, plus costs;
- (h) requiring GeneNews to pay forthwith the amount of the Judgment; and
- (i) granting the Liquidating Trustee such other and further relief as the Bankruptcy Court deems just and proper.

Dated: August 15, 2016

Respectfully submitted,

/s/ Cullen D. Speckhart

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